# IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**FAO(MVA) No. 265 of 2001.**

**Judgement reserved on: 8.5.2007**

**Date of decision: 11.6.2007.**

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**New India Assurance Company Ltd. ….. Appellant.**

**Vs.**

**Vinod Kumar Sharma & ors. …. Respondents.**

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***Coram***

**The Hon'ble Mr. Justice Kuldip Singh, Judge.**

***Whether approved for reporting?***[1]

**For the Appellant : Mr. Sanjeev Sood, Advocate vice Mr. K.D.Sood, Advocate.**

**For the Respondents : Ms. Charu Gupta, Advocate, for respondent No.1.**

**None for respondents No. 2 to 4.**

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**Kuldip Singh, Judge.**

The New India Assurance Company- respondent No. 4, is in appeal against the award, dated 6.3.2000, passed by the Motor Accident Claims Tribunal, Shimla, in MACC No. 85-S/2 of 1997, awarding Rs. 1,18,000/-, with interest at the rate of 12% per annum, from the date of the petition to the date of payment to petitioner Vinod Kumar Sharma against all the respondents, whose liability to satisfy the award shall be joint and several. For convenience, the parties herein are referred in the same manner, as in the impugned award.

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***Whether the reporters of the local papers may be allowed to see the Judgment?***

***2.*** The facts as emerge from the petition are that petitioner alleged that he suffered injuries in an accident of combine Harvester No. PB-II-3421, owned by respondents No. 1 and 2 and at the time of the accident it was being driven by respondent No.3. The respondent No.4 is the insurer.

***3.*** It is the case of the petitioner that on 17.10.1996, when he was going to bus stand Patiala by a Rickshaw in the company of his wife, the combine Harvester came from behind and hit the Rickshaw as a result of which the petitioner suffered multiple injuries. The petitioner remained admitted in Rajindra hospital, Patiala from 17.10.1996 to 14.11.1996. He was operated upon for the injury he sustained in the accident. He has suffered 20% permanent disability on account of the injuries sustained by him in the accident. The petitioner is employed as Professor in the H.P. University and was 49 years of age at the relevant time. He has spent Rs. 1,00,000/- on his treatment out of which only meager amount has been reimbursed by the employer. The accident has taken place due to rash and negligent driving of the driver of the combine Harvester.

***4.*** Respondents No. 1 to 3 filed common reply. They have denied that combine Harvester was involved in the accident while replying paras 11 and 14 of the petition, but in reply to para 24 of the petition accident has not been denied though it is stated that accident took place and the petitioner suffered injuries on account of rashness or negligence on the part of the Rickshaw puller of the Rickshaw, in which the injured was travelling.

***5.*** The insurance company in its reply has alleged that the vehicle was being driven in violation of the terms and conditions of the policy. The man, who was driving the vehicle, did not possess a valid and effective driving licence. There was no valid registration-cum-fitness certificate of the vehicle at the relevant time. The vehicle was being used for a purpose other than those mentioned in the policy. The insurance company denied its liability to pay any compensation.

***6.*** The learned Tribunal allowed the petition, as noticed above.

***7.*** I have heard the learned counsel for the parties and have also gone through the record.

***8.*** The learned counsel for the insurance company has submitted that the driver of combine Harvester did not have a valid and effective driving licence. The combine Harvester was being driven in violation of the terms and conditions of the policy. The combine Harvester is a specific type of vehicle, and, therefore, driver should have a driving licence indicating and authorizing him to drive the combine Harvester. The learned counsel for respondent No.1 has supported the impugned award.

***9.*** The claimant- petitioner Vinod Kumar Sharma, appeared as PW 1, and has supported his case generally. PW 2 Dr. L.R.Verma, has proved disability certificate Ex. PB, of the petitioner. Ex. PX, copy of FIR No. 179 of 1996, has been proved by PW 3 Chet Ram. A copy of licence Ex. R-1, cover note Ex. R-2, insurance policy Ex. R-3, copy of registration certificate Ex. R-4, have been proved by RW 1 Manjit

Singh. The insurance company, vide statement of its Advocate, dated 21.2.2000, has not led any evidence.

***10.*** The licence of respondent No.3 is Ex. R-1 and he is authorized to drive both light and heavy transport vehicles as per this licence. The unladen weight of the combine Harvester is 7500 Kgs, vide registration certificate Ex. R-4. As per Section 2 (21) of the Motor Vehicles Act, light motor vehicle means a transport vehicle or omnibus, the gross vehicle weight of either of which or a motor car or a tractor or road-roller, the unladen weight of any of which does not exceed 7500 Kgs. According to Section 10(2) of the Act, the driving licence shall also be expressed as entitling the holder to drive one or more of the following classes of vehicles, namely, (a) motor cycle without gear; (b) motor cycle with gear; (c) invalid carriage; (d) light motor vehicle; (e) transport vehicle; (i) road roller and (j) motor vehicle of a specified description.

***11.*** In the present case, the licence Ex. R-1 authorises the holder of the licence to drive both light and heavy transport vehicles. The combine Harvester having laden weight of 7500 Kgs. vide Ex. R-4 registration certificate, is therefore, a light motor vehicle. The respondent No.3 was having valid and effective driving licence to drive combine Harvester, at the time of accident. The accident has taken place due to rash and negligent driving of the driver of the combine Harvester. The combine Harvester was insured vide policy Ex. R-3 with cover Ex. R-2. The findings of negligence and quantum recorded by Tribunal are not assailable by insurer who has limited defences open to it under the Act. It is not the case of the insurer that

respondents No. 1, 2 employed respondent No. 3 as driver on combine harvester despite the knowledge of alleged defect in his driving licence. Hence for this reason also the insurer is liable to pay the compensation amount to the injured. The onus to prove defences available to the insurance company remained without proof as insurer did not lead any evidence.

***12.*** The learned Tribunal after appreciating the material on record has rightly concluded that accident has taken place due to rash and negligent driving of the driver of the combine Harvester and as per policy insurance company is liable to pay the compensation. The impugned award does not require any interference.

***13.*** No other point was urged.

***14.*** In view of the above discussion, appeal is dismissed. The impugned award is upheld with no orders as to costs.

**June 11, 2007.** **( Kuldip Singh )**
**(*Hem*)** **Judge.**